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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GIRALD C. MANN  
ATTORNEY GENERAL

Honorable C. S. McClellan, Chairman  
Fish and Game Committee  
House of Representatives  
Austin, Texas

Dear Sir:

Opinion No. O-5151  
Re: Whether waters impounded  
by Denison Dam will change  
the boundary between Texas  
and Oklahoma when such im-  
pounded waters inundate  
that portion of Texas above  
the dam.

This is with reference to your recent letter read-  
ing in part as follows:

"We have before the Fish and Game Committee  
House Bill No. 654, which proposes to regulate  
fishing and hunting on the Denison Dam area, with  
the following boundary to apply only to that por-  
tion of the State of Texas inundated by the waters  
of Red River and its tributaries that are im-  
pounded by a boundary across the channel of  
said Red River near Denison, Texas. It shall  
also apply to any other portion of that area of  
land acquired or that may hereafter be acquired  
by the United States Government for the opera-  
tion of a reservoir on the Red River beginning  
near Denison, Texas.

"The above mentioned dam is rapidly reach-  
ing a stage in its construction whereby impound-  
ed waters have begun to accumulate. A consider-  
able part of the volume of waters to be accumulat-  
ed behind the dam will have been impounded by  
the area during the summer months. This dam  
will inundate a considerable portion of land in

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the State of Texas as well as the State of Oklahoma.

"It has been previously held by a decree of the Supreme Court of the United States that the boundary between Oklahoma and Texas is the south bank of Red River.

"In this connection in our consideration of the above mentioned bill, we will thank you if you will answer the following question:

"Will the south bank of the lake on the Texas side constitute the boundary line between Texas and Oklahoma or will the present south bank of Red River previously established before the formation of this lake still remain the true boundary line of Texas?"

". . . ."

The question presented, in our opinion, was answered by the United States Supreme Court in the case of *State of Oklahoma v. State of Texas*, 260 U. S. 606, 67 L. Ed. 428, 43 Sup. Ct. 221. Without reviewing the history of the litigation in the case of *Oklahoma v. Texas*, or the multitude of questions raised, it is sufficient to state that the location of the boundary between the two states along Red River was a paramount issue. In discussing the question the court said:

"Our conclusion is that the cut bank along the southerly side of the sand bed constitutes the south bank of the river and that the boundary is on and along that bank at the mean level of the water when it washes the bank without overflowing it.

"The boundary as it was in 1821, when the treaty became effective, is the boundary of today, subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes. Of those doctrines this Court recently said:

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"It is settled beyond the possibility of dispute that where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel." Arkansas v. Tennessee, 246 U. S. 158, 173."

In a subsequent decree in the same case rendered March 12, 1923, found in 261 U. S. 340, 43 Sup. Ct. 376, 67 L. Ed. 687, it was said:

"This cause having been heard and submitted upon certain questions, and the Court having considered the same and announced its conclusions in an opinion delivered January 15, 1923 (260 U. S. 606).

"It is ordered, adjudged, and decreed:

"1. The boundary between the States of Oklahoma and Texas, where it follows the course of the Red River from the 100 th meridian of west longitude of the eastern boundary of the State of Oklahoma, is part of the international boundary established by the treaty of 1819 between the United States and Spain, and is on and along the south bank of that river as the same existed in 1821, when the treaty became effective, save as hereinafter stated.

"2. Where intervening changes in that bank have occurred through the natural and gradual processes known as erosion and accretion the boundary has followed the change; but where the stream has left its former channel and made for itself a new one through adjacent upland by the

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process known as avulsion the boundary has not followed the change, but has remained on and along what was the south bank before the change occurred.

"3. Where, since 1821, the river has cut a secondary or additional channel through adjacent upland on the south side in such a way that land theretofore on that side has become an island, the boundary is along that part of the south bank as theretofore existing which by the change became the northerly bank of the island; and where by accretion or erosion there have been subsequent changes in that bank the boundary has changed with them.

"4. The rules stated in the last two paragraphs will be equally applicable to such changes as may occur in the future."

Applying the rules as laid down by the United States Supreme Court in the case of *Oklahoma v. Texas*, supra, it is clear that unless the change in the river bank occurs through the natural and gradual processes known as erosion and accretion that the boundary between the two states shall remain as it was in 1821. The construction of Denison Dam and the subsequent impounding of the waters above the dam would not cause a "natural and gradual" change in the bank, but on the contrary the transition would occur by reason of an unnatural and artificial barrier placed in the stream through the ingenuity of mankind. Under the rule as thus established, any change in the bank of Red River which is not gradual and natural will not work a change in the boundary between the two states along said river.

You are therefore advised that the boundary between Texas and Oklahoma along Red River will remain the same after the erection of the Denison Dam as it was before, subject only to the application of the doctrines of erosion and accretion as above explained.

APPROVED APR 9, 1943

Yours very truly

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